The show was taking place in what was referred to as the hall, and the organiser was stated to have been at the back of the stage at the hall, while the respondent was at the front of the hall at the entrance.

It seemed to me that there was abundant evidence from which it could be inferred, in the absence of any explanation, that the respondent knew what was going on on the stage or that he might have known what was taking place if he had pleased.

I think that the learned magistrate was misled by the reference to *Lim Teck Heng's* case, *supra*. The question which was remitted to the High Court under the provisions of section 317 of the Criminal Procedure Code for decision in that case was whether the wording of section 313(b) of the Merchant Shipping Ordinance, 1952, which uses the word "suffers", excluded *mens rea* by necessary implication. It was held that it did not, although it turned out that on the particular facts of that case the question did not arise. But a case is authority for what it decides and because the wording of that section does not exclude *mens rea*, it does not necessarily follow that actual knowledge on the part of the accused must be proved. The question which arises in such circumstances as in the present case, is whether the prosecution have proved that the accused (the respondent in this case) had actual knowledge or whether it can be inferred, from the facts that they have proved, that he connived at what was going on.

In the absence of any explanation I was of the opinion that such an inference could be drawn in this case, and accordingly I allowed the appeal, set aside the order of acquittal, and remitted the case to the magistrates' court for the respondent to be called upon for his defence.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

CHAND SINGH v. BHAGWAN SINGH

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) April 9, 1965]

[Singapore— Federal Court Civil Appeal No. 70 of 1964]

Practice and Procedure — Appeal — Appeal against decision of trial judge based entirely on his view of facts and evidence — Principle applicable.

This was an appeal against the decision of the trial judge who dismissed a claim by the plaintiff for the repayment of principal and interest for money lent on a promissory note. The evidence of the plaintiff and the defendant at the trial was conflicting and the trial judge accepted the evidence of the defendant.

Held: in such a case it is only if the appellate court finds that the trial judge was plainly wrong in his evaluation of the evidence that the appellate court will interfere with his finding.

Cases referred to:—

(1) *Clarke* v. *Edinburgh and District Tramways Co. Ltd.* [1919] S.C. (H.L.) 35, 37.

(2) *Thomas* v. *Thomas* [1947] A.C. 484, 488.

(3) *Tan Kheng Heng* v. *Heap Moh Steamship Co. Ltd.* [1964] M.L.J. 87, 92.

FEDERAL COURT.

S. H. D. Elias for the appellant.

R. Murugason for the respondent.

Wee Chong Jin C.J. (Singapore) (delivering oral judgment): The appellant commenced an action in the High Court against the defendant for repayment of principal and interest and arrears of interest for money lent on a promissory note.

The defence to the action or claim was that the money had been paid by the sale to the plaintiff/appellant of a taxi belonging to the respondent.

Mr. Justice Ambrose after the hearing of the action dismissed the claim. Hence this appeal.

As I understand the arguments put before us to-day it is submitted that the onus of proof being on the defendant, the promissory note still being in the possession of the plaintiff/appellant, on all the evidence adduced at the trial, the trial judge should have found that the defendant had failed to discharge that onus of proof on him.

On the arguments presented before us, it is in my view quite clearly an appeal where the appellant is trying to persuade this court, an appellate court, to upset the decision of a trial judge based entirely on his view of the facts and the evidence before him.

The principles under which an appellate court acts in such a case has been laid down over and over again and I can put it in just one plain sentence so far as the circumstances of this appeal is concerned. It is only if this court finds the trial judge was plainly wrong in his evaluation of the evidence that this court will interfere with his finding.

Nothing that counsel for the appellant has drawn my attention to so far as the evidence is concerned, has persuaded me to arrive at the conclusion that Mr. Justice Ambrose was plainly wrong when he found on the evidence that the balance of principal and interest due on the promissory note had been paid before the action was commenced. In so far as the evidence is concerned, we have here a case where essentially the plaintiff/appellant tells one story and on the other hand we have the defendant with four witnesses, some of whom are quite clearly independent and unbiassed witnesses who tell a story diametrically opposed to that told by the appellant. The trial judge has accepted the evidence relating to the circumstances as to how the money

borrowed by the defendant were repaid. In those circumstances I do not propose to interfere with his finding.

There is a small point taken by counsel for the appellant on a letter written by the defendant to one of his witnesses which is said to be an admission by the defendant that the loan had not been repaid in the sense that the car belonging to the defendant was in fact sold not to the plaintiff/appellant but to a witness Jeet Singh. Whether or not that is an admission under section 17 or 18 of the Evidence Ordinance, it is unnecessary for me to express an opinion. Even accepting that it comes within the provisions of those two sections nonetheless it cannot be so conclusive where there is the testimony of witnesses and especially from the documentary evidence of exhibit D3 which is a document as I understand it stating that the amount claimed by the plaintiff had been repaid by the defendant, as to justify the trial judge from completely ignoring the oral testimony presented to him at the trial.

In my opinion there is no substance whatsoever in this appeal and I would accordingly dismiss it with costs.

Thomson L.P. (delivering oral judgment): I agree with what my Lord has said and would only refer to what was said by Lord Shaw in confirmation in the case of *Clarke* v. *Edinburgh and District Tramways Co. Ltd.*[1] as quoted in the House of Lords by Lord Thankerton in *Thomas* v. *Thomas* [2] and in the Privy Council by Lord Guest in the recent Singapore case of *Tay Kheng Heng* v. *Heap Moh Steamship Co. Ltd.*: [3]

"In my opinion, the duty of an appellate court in those circumstances is for each judge of it to put to himself, as I now do in this case, the question, Am I — who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case — in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment."

I find myself in the same state of mind as Lord Shaw did in that case.

The appeal should be dismissed with costs.

Tan Ah Tah F.J. concurred.

Appeal dismissed.

Solicitors: *Elias Bros.; Murugason & Co.*

CAPITOL LIMITED v. OW LEUNG & ORS.

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) April 26, 1965]

[Singapore — Federal Court Civil Appeal No. 82 of 1963]

Contract — Agreement granting licence to run restaurant — Breaches of agreement — Waiver — Provision for termination — Licence terminating agreement by re-entry — Claim for damages — Proof of damages.

The plaintiff company was the owner of a restaurant and by an agreement in writing dated November 4, 1960 they engaged the defendants to run the restaurant for a period of 3 years from November 1, 1960. The defendants committed breaches of the agreement and eventually the plaintiff company in accordance with the agreement re-entered upon the premises of the restaurant and resumed control of it. The plaintiff company thereupon claimed the balance of guaranteed minimum payment under the agreement and damages. The first defendant in his defence pleaded that the plaintiff company was not entitled to terminate the agreement or close the restaurant and by way of counterclaim claimed damages for the wrongful closure of the restaurant and the wrongful repudiation of the agreement. At the trial judgment was given for the plaintiff company for the sum of $1,487.86 and disbursements while on the counterclaim, the sum of $1,500 was awarded to the defendants by way of damages. The defendants on appeal contended *inter alia* that (a) the plaintiff company had waived the breaches of the agreement committed by the defendants (b) as the plaintiff company failed to give notice to the defendants of its intention to terminate the agreement it could not rely on the breaches for terminating the agreement.

Held: (1) there was no waiver by the plaintiff company of its rights after the end of June 1961. The true view of the position was that there was forbearance on the part of the plaintiff company for which no consideration was given by the defendants;

(2) the agreement gave the plaintiff company a right to terminate the defendants' engagement and forthwith resume control of the restaurant and the licence was therefore lawfully terminated by the unequivocal act of the plaintiff company in re-entering the restaurant and taking possession thereof;

(3) no evidence was given by the plaintiff company that any endeavour had been made to obtain the services of some other person to run the restaurant and therefore their claim for damages was rightly dismissed.

Further no evidence was given in relation to the damages claimed on the counterclaim and therefore the awards for damages on the counterclaim should be set aside.

Cases referred to:—

(1) *Minister of Health* v. *Bellotti* [1944] 1 All E.R. 238 at p. 242.

(2) *Bonham-Carter* v. *Hyde Park Hotel Ltd.* (1948) 64 T.L.R. 177 at p. 178.

FEDERAL COURT.

L. Rayner for the appellant.

K. K. Bezboruah for the respondent.

Tan Ah Tah F.J.: The plaintiff company is the owner of the Capitol Restaurant. By an agreement dated the 4th November 1960 and made between the plaintiff company as owner of the first part, the defendants as contractors of the second part and the second and third defendants as sureties of the third part, the plaintiff